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# The Curious Case of Werner Weinhold: Escape, Death, and Contested Legitimacy at the German-German Border

*Pertti Ahonen*

IN the early morning hours of December 19, 1975, a shooting incident took place at the inter-German border, on the boundary line between Thuringia and Bavaria, near the East German town of Hildburghausen. According to West German border guards on duty at the time, the moonlit calm of a cold and clear winter night was disrupted around 2:25 a.m. by the sound of submachine-gun fire from the eastern side of the boundary. During the next hours plenty of additional commotion ensued on East German territory: border soldiers combed the terrain behind the border; officers drove around directing the proceedings; helicopters buzzed overhead. Based on their observation of similar past incidents, West German authorities quickly deduced what had probably taken place: an attempted escape across the heavily fortified German-German border. The main variables not known at the time were whether the attempt had been successful and whether anyone had been hurt.<sup>1</sup>

Answers to both these questions also soon emerged. Reports spread of two deaths on the East German side, while a young man whose strong accent marked him as a native of the GDR region of Saxony hitchhiked his way ever deeper into West Germany in the gray December dawn. Obviously shaken, with soiled clothes and jittery hands, he told an initially skeptical motorist that he had just run across the border in a dramatic nocturnal escape. Eventually, the young man—whose name was Werner Weinhold—headed up to Marl, a small town near Essen, where he hoped to find shelter and initial assistance for his new life in the Federal Republic with relatives who resided in the area.<sup>2</sup>

I would like to thank the following people for their useful comments on earlier drafts of this article: this journal's editor and anonymous reviewers, Peter Michell, Louise Settle, Thomas Maulucci, and my fellow panel members at the German Studies Association conference in Milwaukee in September 2005.

<sup>1</sup>"Auszugsweise Abschrift der Grenzlage der ZiB vom 20.12.1975," "Niederschrift aufgenommen am 29.12.1975 in Geschäftszimmer des ZKcm G Coburg," both in Zentrale Beweismittel- und Dokumentationsstelle, Generalstaatsanwaltschaft Braunschweig (hereafter ZBDoSt): AR-ZE 30/76.

<sup>2</sup>Bayerische Grenzpolizei, Coburg, "Vernehmungsniederschrift" of Manfred K., December 22, 1975, ZBDoSt: AR-ZE 30/76; "Zwei Tote auf dem Weg nach Westen," *Stem*, no. 26 (1976).

In the days and weeks that followed, this particular incident assumed considerable public prominence, which was to persist for several years. During this period, the so-called “Weinhold case” (“*Fall Weinhold*”) provoked prolonged and heated legal battles, partly within the Federal Republic but particularly between the two Germanies. More significantly, it also became a profoundly politicized issue, again especially across the German east-west divide. It underscored the contradictory challenges of conflict and cooperation that the GDR and the Federal Republic faced in the détente-imbuéd context of the mid-to-late 1970s, particularly by highlighting the continued significance of the inter-German border for the ongoing Cold-War contest between the two Germanies over the most fundamental asset necessary for these bitter rivals, as indeed for any state: political legitimacy.<sup>3</sup>

At first, the border incident of December 19, 1975, appeared unlikely to achieve such far-reaching notoriety, however. On the contrary, on the western side of the border at least, the events of that wintry night initially seemed to conform to well-established patterns that had by then become almost routine. Violent incidents at the German-German border had been regular occurrences for nearly three decades, and they remained so in the mid-1970s, too, even if their frequency had declined with the GDR’s continuing efforts to perfect its system of preemptive border controls, aimed in large part at catching would-be defectors well before they reached the actual frontier zone. Most such incidents revolved around escape attempts by regular, unarmed East Germans, who came under fire from GDR border troops or were otherwise harmed in the heavily fortified East German border strip on their way toward the Federal Republic. Such cases highlighted some of the ugliest features of the East German system and, predictably, received extensive exposure in the Federal Republic’s public sphere, often in a politicized and instrumentalized fashion, as a part of the ongoing Cold-War rivalry between the two Germanies.

The politicized narrative about the inter-German border and its refugee victims constructed in the Federal Republic, primarily by the country’s political elites and mass media, emerged early, in the 1950s, but it became more pronounced once the building of the Berlin Wall in August 1961 had closed the last major floodgate in the East German border system and made any attempt

<sup>3</sup>For other perspectives on the inter-German border and its competitive uses by the two German states, see, for example, Edith Sheffer, “On Edge: Building the Border in East and West Germany,” *Central European History* 40 (2007): 307–339; Edith Sheffer, *Burned Bridge: How East and West Germans Made the Iron Curtain* (Oxford: Oxford University Press, 2011); Maren Ullrich, *Geteilte Ansichten. Erinnerungslandschaft deutsch-deutsche Grenze* (Berlin: Aufbau, 2006); Astrid M. Eckert, “‘Greetings from the Zonal Border’: Tourism to the Iron Curtain in West Germany,” *Zeithistorische Forschungen*, online edition, 8 (2011), <http://www.zeithistorische-forschungen.de/16126041-Eckert-1-2011>; Pertti Ahonen, “Defending Socialism? Benito Corghi and the Inter-German Border,” *History in Focus* 11 (2006), special issue on migration, <http://www.history.ac.uk/ihr/Focus/Migration/articles/ahonen.html>.

to flee to the west an increasingly hazardous enterprise. The narrative's starting point was a denunciation of the heavily armed border as an abomination and living proof of the depravity of communism. According to declarations issued by the Bonn government, the very existence of this aggressively guarded, nearly impenetrable boundary exposed the "brutal inhumanity" of the East German system and proved that a regime compelled to "install a dividing line of barbed wire, concrete walls, and bayonets" within the nation possessed "no legitimacy"—in obvious contrast to the democratic polity of the Federal Republic.<sup>4</sup>

The violence inflicted on fleeing refugees by the GDR's border regime provided an even stronger public relations card, which the Federal Republic's elites consistently played to their advantage. Incidents at the boundary received widespread coverage in West Germany's media and political arena. Commentators typically provided sympathetic, even heroic, portraits of East Germans who managed to cross the border and lamented and commemorated those shot down while trying to do so. They also portrayed escape attempts as proof of the "hopelessness and desperation" rampant in the GDR and denounced East Germany for violating international law and basic human rights by curtailing the free movement of individuals and authorizing the shooting of fleeing refugees.<sup>5</sup> In addition, the standard West German narrative drew on a predictable historical precedent to discredit the GDR further: the Third Reich. Particularly during the first half of the 1960s, in the aftermath of the Berlin Wall's construction, such comparisons flourished. According to representative public statements, the building of the Wall had completed the transformation of eastern Germany into "the biggest concentration camp in the world" in which "Hitler lived on" and border guards continued the "blood-soaked practices" of the "execution commandos of the SS and the SA."<sup>6</sup>

By the mid-1970s, some of these rhetorical practices had altered somewhat. With the gradual buildup of interstate relations and other improved contacts between the two Germanies that had evolved as a part of east-west détente, the most aggressive accents, particularly the hard-hitting Nazi analogies, had largely disappeared. But the broader West German narrative about the border and its victims as proof of the inferiority and ultimate illegitimacy of East German state socialism continued to flourish. Governmental statements stressed

<sup>4</sup>Zur *Situation in der Sowjetzone nach dem 13. August 1961. Bericht und Dokumente* (Bonn: Bundesministerium für gesamtdeutsche Fragen, 1961), 7; Ernst Lemmer's foreword in *Der Bau der Mauer durch Berlin* (Bonn: Bundesministerium für innerdeutsche Beziehungen, 1986, reprint from 1961), 5.

<sup>5</sup>Zur *Situation*, 12.

<sup>6</sup>"Das grösste Konzentrationslager der Welt," *Die Rheinpfalz*, June 16, 1962; Franz Amrehn, cited in Presse- und Informationsamt des Landes Berlin, ed., *Es begann am 13. August* (West Berlin: Presse- und Informationsamt des Landes Berlin, 1961), 4; "Mord an der Mauer," *Kurier*, August 18, 1962.

“respect for human rights” as an essential component of détente and urged the GDR to make its brutal border regime more “humane.”<sup>7</sup> The mass media struck similar notes, exemplified by an August 1975 editorial in a mainstream regional daily, according to which “the universal declaration of human rights” would “one day . . . prove stronger than the Wall” erected by East Berlin.<sup>8</sup> Violent incidents at the inter-German boundary continued to be denounced by politicians and media commentators alike, with the most vocal protests predictably resulting from deaths caused by East German border guards or by particular anti-personnel devices, such as the land mines and automatic shooting machines deployed in many parts of the GDR border strip.

Particular prominence in much of the commentary accrued to the so-called *Schiessbefehl*, or shooting order, which supposedly regulated the behavior of East German border guards. Since the early 1960s, West German commentators had speculated that a central directive, issued from the top of the East German power hierarchy, ordered border guards “to shoot indiscriminately at all refugees,” as one reporter suggested in 1962.<sup>9</sup> Such a sweeping generalization failed to capture the reality of the secret, partly contradictory, and ambiguous orders and instructions that actually regulated the behavior of the East German guards. But it remained a frequently applied rhetorical tool vis-à-vis the GDR even in the 1970s. After a deadly shooting at the Berlin Wall in early 1974, for example, the mayor of West Berlin condemned this latest “unscrupulous application of the inhumane Schiessbefehl” as an assault on “the policy of détente.”<sup>10</sup> With its portrayal of the GDR as a brutal regime whose practices grossly violated contemporary international norms, the prevailing West German public narrative about the inter-German boundary remained a very useful tool for delegitimizing the GDR while promoting positive identity-building and legitimization within West Germany. It also enjoyed wide popular resonance, not only within the Federal Republic but also abroad, at least outside the Soviet bloc. On this basis, one would have expected the refugee who ran across the border on December 19, 1975, to have been welcomed with open arms in the Federal Republic and the two people who had apparently died on the eastern side to have received extensive attention as victims of communist oppression.

That was not to be the case, however. Far from being greeted as a hero, Werner Weinhold was arrested by West German police in Marl on December 22, 1975. This was because his flight to the West had been anything but an innocent,

<sup>7</sup>West German governmental declaration of July 28, 1976, in *Bulletin des Presse- und Informationsamtes der Bundesregierung*, 1976, 847.

<sup>8</sup>“Jenseits der Mauer,” *Bonner Rundschau*, August 14, 1975.

<sup>9</sup>“Berlin, 13. August 1961,” *Rheinische Post*, August 10, 1962. See also Hans-Hermann Hertle and Gerhard Sälter, “Die Todesopfer an Mauer und Grenze,” *Deutschland-Archiv* 39 (2006): 667–76.

<sup>10</sup>“Ich sah genau, wie der Grepo seinen Kameraden niederschoss,” *Bild*, January 7, 1974.

unsullied leap for freedom. The 26-year-old Weinhold had accumulated a long criminal record in the GDR. He had spent several years in prison since the late 1960s, primarily because of repeated car thefts but partly also because of a foiled attempt to escape to the west in autumn 1968.<sup>11</sup> After his release, he had been drafted for military service in a tank regiment near Cottbus, close to the Polish border. In the early morning hours of December 15, 1975, Weinhold deserted his unit, taking with him a submachine gun and more than 300 rounds of ammunition. During the next fourteen hours, he made his way westward across East Germany, stealing three cars along the way, at one point brandishing his weapon at two unarmed traffic-police officers, and eventually entering the extended border zone vis-à-vis the Federal Republic near Hildburghausen in southern Thuringia. By this time, a large-scale search for him had been launched, and once the last of Weinhold's three stolen cars was discovered in the Thuringian border district, the manhunt became increasingly localized and intensive. To avoid detection, Weinhold spent the next three days hiding in a haystack inside a barn, in freezing temperatures, surreptitiously stealing food preserves from the neighboring farmhouse, biding his time. Shortly after midnight on December 19 he finally left his hideout, fully armed; walked and crawled his way through forested terrain to the nearby east-west border in the moonlit night; and managed to reach the Federal Republic some two hours later.<sup>12</sup> Weinhold's escape had succeeded, but the criminal activity that had accompanied his exit had apparently reached a disturbing crescendo at the last east-west hurdle. According to very credible-sounding reports that soon began to emerge from the GDR, he had shot and killed two young East German military conscripts who had been performing guard duty at the border: twenty-one-year-old Klaus Peter Seidel and twenty-year-old Jürgen Lange.<sup>13</sup> In other words, the usual roles of inter-German border tragedies had been reversed: an armed escapee had apparently slain two frontline guards to secure his exit from the GDR to the Federal Republic.

Although Weinhold's case was highly unusual, it was not unique. Other people, too, shot and killed on-duty East German border guards. According to the official GDR count, twenty-five guards lost their lives while in service on the German-German border over the years. Most were killed in connection

<sup>11</sup>See the several sentences by East German courts, available in Bundesarchiv, Berlin Lichterfelde (hereafter BAL): DP 3, 441.

<sup>12</sup>Staatsanwaltschaft Essen, interrogation protocols of Werner Weinhold, December 22, 1975, and January 13, 1976, both in ZBDoSt: AR-ZE 30/76; DDR Grenztruppen, "Abschlussbericht über den gewaltsamen Grenzdurchbruch mit Anwendung der Schusswaffe am 19.12.1975, gegen 2.40 Uhr, im Abschnitt ca. 2000 m. südlich der Ortschaft Harras, III Grenzbataillon, Grenzregiment 9 Hildburghausen," December 23, 1975, Bundesarchiv-Militärarchiv, Freiburg (hereafter BA-MA): GT 6493.

<sup>13</sup>"Grenzsoldaten der DDR meuchlings ermordet," *Neues Deutschland* (hereafter ND), December 22, 1975.

with escape attempts, often in murky circumstances. The first death occurred in August 1949—shortly before the GDR had even been founded—and the last in March 1985, with Seidel and Lange the twentieth and twenty-first victims on the official list.<sup>14</sup> Each case received extensive publicity in East Germany, as the dead guards assumed central importance within the wider East German counter-narrative about the German-German border. Although this discourse had begun to emerge in the 1950s, apace with the advancing fortification of the GDR's western frontier, it shot to full prominence after the building of the Berlin Wall in August 1961. Its central point, repeated again and again in governmental statements, official publications, and the news media, was that the building of a highly fortified boundary vis-à-vis the Federal Republic had been a defensive measure of last resort, imposed on East Berlin by persistent aggression and hostility from the west. Espionage, subversion, sabotage, moral corruption, and violent attacks against property and people all featured prominently on the list of alleged western transgressions, but the most pernicious activity bore the label of "*Menschenhandel*" or "*Kopffägerei*" (i.e., "trafficking in human beings" and "head-hunting"). According to *Neues Deutschland*, "spy headquarters in West Germany and West Berlin" had been conducting "systematic recruitment of citizens of the German Democratic Republic and organizing downright 'trafficking in human beings'" (*Menschenhandel*).<sup>15</sup> In other words, the massive westward migration of East Germans between the late 1940s and early 1960s had been primarily the result of sinister machinations by western agents and agitators, who had been targeting GDR citizens, luring them away under false pretenses, sometimes even kidnapping them. All this had ultimately forced long-suffering East Berlin to close its entire border vis-à-vis the west, particularly because the latter had harbored even more sinister plans of aggression. As Walter Ulbricht himself explained in a televised speech in late August 1961, the west's espionage and sabotage activities, including the persistent *Menschenhandel*, had aimed to "create the conditions in which . . . it would have been possible to launch an open attack against the GDR."<sup>16</sup>

To underscore the seriousness and the perseverance of the western threat, the East German narrative, too, drew on the precedent of the Third Reich and posited a close continuity between the Nazi era and the Federal Republic. A well-known 1960s propaganda film about divided Berlin, for example, traced a "direct road from Hitler's Third Reich to the Adenauer era" for most "Nazi criminals."<sup>17</sup> But

<sup>14</sup>Kurt Frotscher and Horst Liebig, *Opfer deutscher Teilung. Beim Grenzschutz getötet* (Schkeuditz: GNN-Verlag, 2005).

<sup>15</sup>"Beschluss des Ministerrates der Deutschen Demokratischen Republik," and "DDR-Patrioten enthüllen Methoden der Menschenhändler," both in *ND*, August 13, 1961.

<sup>16</sup>"Ansprache des Vorsitzenden des Staatsrates der Deutschen Demokratischen Republik, Walter Ulbricht, im Rundfunk und Fernsehen," *ND*, August 19, 1961.

<sup>17</sup>1962 DEFA-documentary "Schaut auf diese Stadt," Bundesarchiv-Filmarchiv, Berlin (hereafter BA-FA): Dokumentarfilme ab 1945, G-Z.

the key point here was neither continuity on the level of individuals nor a specific link between Nazism and the Federal Republic. It was rather the generic circumstance of capitalism as the structural basis for expansionist aggression and, at least potentially, fascism. This structurally rooted fascist potential ultimately explained the threat faced by East Germany, justified the defensive border fortifications, and exposed the illegitimacy of the Federal Republic as an unreformed morass of reaction, in contrast to the fundamentally transformed, peace-loving, and progressive GDR, whose antifascist credentials made it the better, peaceful, progressive, and therefore more legitimate German state.

This grand narrative changed relatively little between the early 1960s and the mid-1970s. Although some of the sharpest Nazi analogies faded from East German rhetoric, too, the GDR's overall account of the rationale for its westward-facing border regime remained uncompromising. According to the official line, East Berlin's decisive actions had dealt a severe blow to western "revanchists," particularly on August 13, 1961, when they had rescued "peace in Europe in a critical situation," paving the way for east-west détente on the continent.<sup>18</sup> But the imperialist threat had not been eliminated. The western "Saul had not been transformed into Paul," to quote one biblically well-versed commentator.<sup>19</sup> Multiple dangers persisted, and vigilance at the boundary remained essential.

Within this broad narrative, the East German border guards killed in the line of duty starred in two separate, yet closely linked roles. On the one hand, they were victims of the fascist and proto-fascist western forces that had allegedly caused their deaths. As victims, they personified the dangers that the border system supposedly served to tame and therefore provided a key justification for its existence. But they were also heroes, everyday socialist personalities who had risen to an extreme challenge in an extraordinary way, sacrificing themselves for the common good and providing an example for everyone else. Through the concentrated publicity campaigns that followed their deaths, the fallen guards were transformed into secular deities of a particular type in a much wider pantheon of socialist heroes that the East German elites had systematically created for purposes of popular mobilization, legitimization, and identity-building, drawing on models initially introduced in the Soviet Union. Alongside other, previously established hero types, including those of the antifascist resisters and the pioneers of postwar reconstruction, they represented yet another category, best labeled hero-victims of the socialist frontier.<sup>20</sup> They became mobilization and

<sup>18</sup>"Zum 13. August," *ND*, August 13, 1976; "13. August 1961—ein Tat für Frieden und Sicherheit," *ND*, August 14/15, 1976.

<sup>19</sup>"Zehn Jahre danach," *Berliner Zeitung*, August 13, 1971.

<sup>20</sup>On socialist heroes in the GDR and the rest of the Soviet bloc, see Silke Satjukow and Rainer Grieds, eds., *Sozialistische Helden. Eine Kulturgeschichte von Propagandafiguren in Osteuropa und der DDR* (Berlin: Links, 2002).



identification figures who could potentially be used to forge links between the regime and the people and to inspire the population to enhanced efforts on behalf of the socialist collective. Accordingly, personality cults of a sort were constructed around the dead guards: the immediate media barrage surrounding each death was followed by further waves of politically instrumentalized attention and commemoration, including highly publicized funeral rites, frequent media commentary, prominent memorials, commemorative ceremonies of various sorts, particularly on important anniversary dates, as well as extensive campaigns to name various institutions around the country after individual martyred border guards.<sup>21</sup>

These efforts, which had started in the 1950s and intensified in the early 1960s, following the building of the Berlin Wall, were well established by the mid-1970s. They were in plentiful evidence, once again, after the killings of December 19, 1975, as Klaus Peter Seidel and Jürgen Lange were lavished with the kind of posthumous attention that various other slain border guards had received in preceding years. The early media coverage portrayed the two men as hero-victims “treacherously murdered” by the ruthless criminal Weinhold while “responsibly carrying out their duty to protect the state border of the German Democratic Republic.”<sup>22</sup> Both got a posthumous promotion and a military decoration for the “exemplary and selfless fulfillment of their obligations.”<sup>23</sup> Their respective funerals were stately, large-scale affairs, attended by “leading generals and officers” and relayed to every corner of the republic through the mass media.<sup>24</sup> Lange and Seidel were also promptly given dedicated memory sites that served as venues for regular commemorative rituals. Their military unit in the town of Eishausen established a collective memorial for the two men, and each also received an individualized memory site in his hometown, East Berlin in the case of Seidel and Werdau in that of Lange. All three sites witnessed elaborate ceremonies in honor of the fallen hero-victims on key anniversaries, including those of their deaths, which aimed not only to commemorate the fallen guards but also to mobilize the population in general and some special target groups, including currently serving border guards and the country’s youth, in particular to greater individual and collective exertions.<sup>25</sup> With the same goal in mind, the authorities also kept naming various institutions, such as children’s homes and youth organizations, after the fallen guards, as a part

<sup>21</sup> On these processes, see Pertti Ahonen, *Death at the Berlin Wall* (Oxford: Oxford University Press, 2011), esp. chap. 3 and 4.

<sup>22</sup> “Grenzsoldaten der DDR meuchlings ermordet,” *ND*, December 22, 1975.

<sup>23</sup> “Ermordete Grenzsoldaten wurden posthum geehrt,” *ND*, December 23, 1976.

<sup>24</sup> “Ermordete Grenzsoldaten mit militärischen Ehren beigesetzt,” *Volksarmee*, no. 1 (1976).

<sup>25</sup> See, for example, “Ehrendes Gedenken für ermordete Grenzsoldaten,” *Berliner Zeitung*, December 20, 1976; “Ehrendes Gedenken für ermordete Grenzsoldaten,” *ND*, December 20, 1982.

of their campaign to stamp the names and fates of Klaus Peter Seidel and Jürgen Lange onto East German public memory.<sup>26</sup>

But the Weinhold incident also gave the GDR openings for more far-reaching public relations activity. Unlike most other shootings of East German border guards, this particular case had yielded a culprit who was not only alive and physically unharmed but also identifiable beyond reasonable doubt, and, even more tantalizingly, under arrest in the rival German polity. All this meant that in many ways the pressure would be on the Federal Republic to prove that it would abide by standard legal norms in its treatment of a man under suspicion for what could be defined as manslaughter or possibly even murder—a reversal of the typical legal scenario in the aftermath of deadly incidents at the German-German border. The prosecution and possible punishment of Werner Weinhold therefore became a highly politicized and sensitive matter in the broader struggle between the two Germanies, as it gave the GDR a chance to turn the tables on its great rival, to go on the offensive where it had normally been forced on the defensive.

Predictably, the GDR wasted no time in announcing its demands to the world. It maintained that Weinhold, a callous career criminal, had cold-bloodedly murdered two innocent soldiers and that he should therefore be taken into custody and extradited to the GDR for prosecution. Weinhold's prompt arrest in December 1975 ensued on the basis of the East German charges, but extradition was out of the question, despite all of East Berlin's pleas and threats, because it would have implied recognition of the GDR as a second fully sovereign German state—anathema to Bonn even in the age of détente—and because the Federal Republic did not normally extradite German citizens in any case.<sup>27</sup> As a result, Weinhold spent the first months of 1976 in a West German prison, while the Public Prosecutor's Office (*Staatsanwaltschaft*) in Essen investigated the case and prepared charges against him.

In the meantime, two sharply conflicting narratives of the events of December 19, 1975, and their background received wide circulation. Weinhold's own version, promulgated primarily through numerous interviews, stressed his long-standing rejection of the East German system. Starting with conflicts with his "staunchly communist" father, he claimed to have grown into an oppositional figure who "liked to listen to the Rolling Stones rather than to the teachings of Lenin" and whose disillusionment with the regime became complete during his time in prison, particularly in the notorious penitentiary of Bautzen, where he was incarcerated after his failed escape attempt of 1968. Personal factors had

<sup>26</sup>See, for example, "Köpenicker Kinderheim erhielt Ehrennamen," *ND*, December 7, 1983.

<sup>27</sup>See, for example, the GDR's Generalstaatsanwalt to the Federal Republic's Minister of Justice, December 21, 1975, and January 23, 1976; and Generalstaatsanwalt Hamm to the GDR's Generalstaatsanwalt, February 27, 1976, all in BAL: DP 3, 441.

also contributed to his victimization. Shortly before his flight to the west in December 1975 he had discovered that his wife of two years, with whom he had an infant daughter, had started seeing another man. With nothing left to hold him back in the GDR, Weinhold had “just wanted to get away” and reach “freedom.”<sup>28</sup>

Weinhold maintained that he never meant to kill anyone and that his behavior in the border strip on the night of December 19 was entirely reactive and defensive. According to his account, he was only some 100 meters away from the final border fence vis-à-vis the west, in a state of high exhaustion and nervous tension, when a guard suddenly stood up, some thirty to fifty meters to his right, and ordered him to stop. Immediately thereafter, another guard, who was lying on the ground in the same area, opened fire at him without warning. In reaction, Weinhold took cover and shot back, in self-defense, first at the guard who had initially opened fire and then at his colleague. Once his tormenters had stopped shooting, Weinhold got up and stormed his way across the final border fortifications to West Germany. In other words, Weinhold admitted having shot at two border guards, but only in self-defense, in fear for his life, with no intent to kill and no knowledge of what damage his actions might have caused.<sup>29</sup>

In sharp contrast, the GDR's version of the events predictably said nothing about alleged political motives behind Weinhold's actions. From East Berlin's perspective, Weinhold was a career criminal “with several previous convictions” who had fled the country to escape the consequences of his own transgressions. According to East German prosecutors, he had committed an unspecified “sexual offense” shortly before his violent exit, and his main motive had been to evade investigation and punishment for that act.<sup>30</sup> On his way from the GDR to the Federal Republic, several further felonies had ensued, among them desertion, repeated larceny, and—most significantly—double murder. The murder accusations reflected an interpretation of the deaths of border guards Lange and Seidel, purportedly constructed from autopsy records and crime-scene investigations, which starkly contradicted Weinhold's own account of events in the border strip. According to East German authorities, neither Seidel nor Lange had fired a single bullet. The former had met his death in a seated position, while the latter had lain prone on the ground, crawling away from the gunman. Both had been shot from close range, from a few meters' distance at most, in an

<sup>28</sup>“‘Jetzt must du schießen,’ dachte ich, ‘sonst erschossen sie dich,’” *Bild*, June 5, 1976; “Der Mann, der Ost-Berlin 100,000 Mark wert ist,” *Welt am Sonntag*, June 13, 1976.

<sup>29</sup>Along with the sources in the previous note, see also “Die würden mich zweimal zum Tode verurteilen,” *Bild*, June 10, 1976; “Zwei Tote auf dem Weg nach Westen,” *Stern*, June 16, 1976; “Schießen war mein einziger Ausweg,” *Quick*, June 23, 1976.

<sup>30</sup>See, for example, “Weinhold ist an die DDR auszuliefern,” *Unsere Zeit*, June 18, 1976; “Grenzsoldaten der DDR meuchlings ermordet,” *ND*, December 22, 1975.

almost execution-like fashion. The escapee had been no innocent victim but a cold-blooded aggressor.<sup>31</sup>

The legal drama around Weinhold moved into higher gear in late November 1976 when his trial on two charges of manslaughter finally began in Essen, following prolonged legal wrangling. The East German authorities had never ceased demanding the accused man's extradition, and in a highly controversial move they had even offered a reward of 100,000 Deutschmarks for his capture and delivery to the GDR at a point in mid-1976 when Weinhold was briefly released from detention.<sup>32</sup> But in the months leading to the trial they had also provided the West German prosecutors with selected pieces of evidence, albeit in a fashion that arguably undermined rather than boosted the Essen prosecutors' case: the copied documents handed over by the GDR were not even officially verified, which was bound to fuel questions about their veracity—and about that of the East German version of the events in general. To make matters worse, the GDR also refused to provide any additional materials or to allow witnesses to travel to Essen to testify.<sup>33</sup>

Given these problems, it was not entirely surprising that the Essen court found Weinhold not guilty in early December 1976. Hard evidence for what had happened on the night of December 19, 1975, remained scanty, and much of what was available seemed potentially unreliable, in good part because of the GDR's refusal to be more cooperative. Therefore, in the presence of reasonable doubt, the court was in many ways obliged to decide in the defendant's favor. Other aspects of the trial provoked consternation, however. Various commentators raised procedural criticisms: only one-and-a-half days of deliberations, few witnesses, judges who seemed far too willing to accept Weinhold's statements at face value.<sup>34</sup> But the fiercest controversy surrounded the rather adventurous and highly politicized justifications that the judges provided for their verdict. According to the lengthy written ruling, the GDR was a fundamentally unjust polity that arbitrarily limited its people's freedom of movement, most glaringly by "violently preventing [its] citizens from leaving its territory." To maintain control, the regime had turned the country into a "heavily armed fortress," guarded not only by "trenches, mine fields, and automatic shooting devices" but above all by heavily armed border personnel. Because of the criminal

<sup>31</sup>"Abschlussbericht über den gewaltsamen Grenzdurchbruch mit Anwendung der Schusswaffe am 19.12.1975, gegen 2.40 Uhr, im Abschnitt ca. 2000 m. südlich der Ortschaft Harras, III Grenzbataillon, Grenzregiment 9 Hildburghausen," December 23, 1975, BA-MA: GT 6493; Institut für gerichtliche Medizin, Friedrich-Schiller-Universität Jena, "Gerichtmedizinisches Gutachten vom 13.2.1978," BAL: DP 3, 436.

<sup>32</sup>"Steckbrief gegen Doppelmörder Weinhold," *Berliner Zeitung*, June 9, 1976.

<sup>33</sup>The GDR's Generalstaatsanwalt to the Federal Republic's Minister of Justice, November 19, 1976, BAL: DP 3, 441.

<sup>34</sup>"Wenige Fragen, Verzicht auf Zeugen," *Frankfurter Rundschau* (hereafter *FR*), December 1, 1976; "Ein Stück deutscher Tragik?," *Die Zeit*, December 3, 1976.

Schiessbefehl, the guards were under orders to “fire at escapees in a targeted way, without warning, to kill,” and in practice they “use[d] their weapons with unparalleled unscrupulousness.” Under such “inhumane conditions,” which constituted “a violation of the fundamental principles of justice (*Rechtsstaatlichkeit*),” individuals had the right to pursue their “freedom of movement” and to defend themselves against armed attack from representatives of the GDR regime, even with violence, as Weinhold had done. The theft of several vehicles during the escape and even the use of his firearm had been necessary “self-defense.” In the border strip in particular, “no lesser means” than shooting had been available for the escapee to defend himself against the potentially lethal attack against him launched by the border guards. In the end, Weinhold’s “basic right to freedom of movement and the resulting prospect of living in a free country” justified his actions and necessitated an acquittal.<sup>35</sup>

To be sure, the judges were aware of their ruling’s potentially radical implications, and they laced their conclusions with certain qualifiers. They argued that the justification of self-defense for violent action against the GDR’s inhumane border system applied only when the escapee in question did not provoke the emergency in the first place by deliberately intending to kill or otherwise harm East German officials. In vague terms at least, they suggested that any violence committed by an escapee had to be reactive, a response to potentially life-threatening action initiated by armed East German officials, rather than a proactive assault.<sup>36</sup>

Although these qualifiers did somewhat lessen the political edge of the Essen court’s verdict, a storm of controversy immediately broke out. In the Federal Republic, the public echo was divided, roughly along the lines that had separated the center-right opponents and center-left proponents of the Social-Liberal government’s new *Ostpolitik* since the start of the decade. To be sure, most politicians abstained from explicit public statements about the trial, stressing the independence of the judiciary in the West German political system. But numerous media outlets seized the chance to expound on the ruling. Predictably, conservative commentators found much to commend in Weinhold’s acquittal and the court’s general denunciation of the East German regime, while much of the left-liberal wing of the media establishment waxed notably critical.<sup>37</sup> Journalists feared that the ruling could be read as an endorsement of a sort of everyman’s right to shoot his way out of the GDR, which might turn “the border between the two German states” into a “civil war boundary.”<sup>38</sup> Critics also

<sup>35</sup>Landgericht Essen, sentence of Werner Weinhold, December 2, 1976, BAL: DP 3/447, esp. 38, 40, 42, 46, 48–9.

<sup>36</sup>Ibid., esp. 43–96.

<sup>37</sup>See, for example, “Campagne der DDR,” *Rheinischer Merkur*, December 10, 1976; “Frei!,” *BZ*, December 3, 1976.

<sup>38</sup>“Unwahrscheinliche Freude,” *Der Spiegel*, December 6, 1976.

argued that, despite all its faults, "the GDR was no super-sized Auschwitz in which any form of reactive violence counted as self-defense."<sup>39</sup>

Even these relatively harsh criticisms paled in comparison with East German reactions, which were, unsurprisingly, vitriolic. In a reversal of many earlier German-German discourses about deaths at the borderline, the GDR attacked the Federal Republic head-on for allegedly violating all manner of legal and humanitarian norms. According to East German commentators, the case had, yet again, exposed West Germany as an oppressive capitalist society in which fair trials were impossible, not least because of the numerous "Nazi judges" still in service there.<sup>40</sup> It had also proved that the Federal Republic grossly breached "all principles of international law" by refusing to extradite a dangerous criminal to the "sovereign state" in which he had committed his evil deeds.<sup>41</sup> All this allegedly violated the 1972 Basic Treaty between the two Germanies and the multi-lateral Helsinki Accords signed in summer 1975, proving that "anti-détente forces" in the Federal Republic wanted to "restart the Cold War."<sup>42</sup> The Essen court gave a perverse reading of an individual's presumed right to self-defense, distorting it into a general license to kill and "making itself guilty of instigation to murder." The judges' underlying agenda was to "encourage . . . attacks against the GDR's state border" and to endorse the shooting of on-duty GDR officials with impunity.<sup>43</sup> In ensuing weeks, the East German media reported extensively on allegedly widespread popular "fury" about the "shameful verdict," expressed primarily through protest resolutions adopted by numerous workplace collectives from throughout the land, more than 1,500 of which had reached the West German permanent representation in East Berlin by January 1977.<sup>44</sup> The resolutions, as well as other statements by journalists and political leaders, kept demanding Weinhold's extradition to the GDR, so that he could be tried properly.

The extradition demands still lacked any chance of success in the Federal Republic, but the Essen court's controversial decision was not the final judicial word on the Weinhold case. The prosecutors immediately appealed to the West German Supreme Court (*Bundesgerichtshof*), which in September 1977 decided in their favor. Criticizing the court of first instance for failing to

<sup>39</sup>"Ein deutsches Urteil," *FR*, December 3, 1976.

<sup>40</sup>"Anstiftung zum Mord," *Berliner Zeitung*, December 3, 1976.

<sup>41</sup>"Doppelmörder an DDR-Grenzsoldaten wurde in der BRD freigesprochen," *ND*, December 3, 1976; "Urteil zielt gegen die Entspannung," *Tribüne*, December 13, 1976.

<sup>42</sup>"Der Doppelmörder Weinhold gehört vor ein Gericht der DDR," *ND*, January 19, 1977.

<sup>43</sup>"Anstiftung zum Mord," *Berliner Zeitung*, December 3, 1976; Karl-Eduard von Schnitzler, "Verbrecher als Held," *Bauern-Echo*, December 4, 1976.

<sup>44</sup>See, for example, "Schandurteil angeprangert," *Tribüne*, December 14, 1976; "Proteste gegen Essener Schandurteil halten an," *ND*, December 28, 1976; Gaus to the Auswärtiges Amt, January 27, 1977, in *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland 1977* (Munich: Oldenbourg, 2008), 90-91.

investigate the case properly, the judges overturned the Essen ruling and ordered a new trial in the near-by town of Hagen.<sup>45</sup>

This trial, which stretched from October to December 1978, unfolded in a spirit very different from that which had prevailed in Essen two years earlier. The court made a much more conscientious attempt to examine the events of December 19, 1975, and their background. It spent thirteen days deliberating the case, hearing thirty-five witnesses, and it subjected the witnesses and, more importantly, the defendant to the kind of serious cross-examination that had been missing from the first trial.<sup>46</sup> The proceedings even included a visit to the inter-German border near the site of the double killing, a tense affair on a foggy autumn day, during which Weinhold insisted on wearing a bulletproof vest for fear of East German sharpshooters.<sup>47</sup> The court's efforts were also bolstered by enhanced cooperation from GDR authorities. While still refusing to allow key witnesses to travel to testify at Hagen, the East Germans conducted public judicial hearings to assemble relevant evidence, which they then sent to the court, this time properly certified.<sup>48</sup> As an additional source of moral pressure, they even allowed the elderly parents of the two victims to attend the proceedings as joint plaintiffs.<sup>49</sup>

The Hagen court's final ruling also differed sharply from that of its Essen counterpart. This time, the judges largely followed the East German account of the events. To be sure, they rejected some of the GDR's characterization of Weinhold, such as the claims that he had committed a serious sexual offense shortly before his escape. But they also dismissed Weinhold's attempts to portray himself as a committed anticommunist. In their view, the defendant was no "spiritual or political person" but rather a man driven by his own "ego-centric notions," without noticeable "ideals or ideologies" who had embarked on his escape attempt impulsively, as an "act of defiance" against perceived personal and societal slights. In his rush toward the inter-German border, heavily armed, he had engaged in "a calamitous play with fire." He had committed several offenses, ranging from desertion to multiple counts of theft, for which he would have been subject to arrest in the Federal Republic, too. In the

<sup>45</sup>"Freispruch für Weinhold aufgehoben," *Süddeutsche Zeitung* (hereafter *SZ*), September 11, 1977.

<sup>46</sup>"Die letzten Zeugen halfen nicht mehr," *Kölner Stadt-Anzeiger*, December 2/3, 1978.

<sup>47</sup>"Trotz kugelsicherer Weste—Weinhold zitterte vor Angst," *Westfälische Rundschau*, November 4, 1978.

<sup>48</sup>"Protokoll über die gerichtliche Beweiserhebung des 2. Strafsenats des Bezirksgerichts Dresden vom 26. April 1978 bis zum 28. April 1978 auf Grund des Rechtshilfeersuches des Generalstaatsanwalt der DDR vom 10. Februar 1978 in der Auslieferungsangelegenheit Werner Weinhold," BAL: DP 2, 2223; "Protokoll über die ergänzende gerichtliche Beweiserhebung des 2. Strafsenats des Bezirksgerichts Dresden vom 4. August 1978 auf Grund des Rechtshilfeersuches des Generalstaatsanwalt der DDR vom 10. Februar 1978 in der Auslieferungsangelegenheit Werner Weinhold," BAL: DP 2, 2224.

<sup>49</sup>"Auf dem Richtertisch lag die Kalaschnikow," *Hagener Zeitung*, October 24, 1978.

border strip, he had willfully provoked a dangerous situation, and then, acting “in effect” but not in legitimate self-defense, shot and killed Lange and Seidel, firing first and from close range, in reaction to a warning shout from Seidel, without either guard taking a shot at him. The judges acknowledged several mitigating circumstances, including Weinhold’s complicated personal history, the extraordinary situation in which the shooting had taken place, as well as the broader political context of “the unlawful measures at the border” that the GDR had implemented with its “border wall, barbed wire, death strip, and Schiessbefehl.” But they stressed that “human life” nevertheless remained “the highest legally protected interest” and that an individual’s claim to “the fundamental right of freedom of movement” had to remain subordinate to it, even at the inter-German boundary. The court pronounced Weinhold guilty of manslaughter and larceny and sentenced him to five-and-a-half years in prison, a judgment that was subsequently confirmed on appeal.<sup>50</sup>

This outcome was greeted as “fair” and “measured” by most West German commentators, with particular praise for the “intensive fashion” in which the court had “grappled with the situation of a transgressing individual in a repressive state.” There was also predictable criticism from some conservatives, however, who denounced the verdict as a disturbing example of east-west “normalization” gone awry.<sup>51</sup> Equally predictably, the GDR minced no words in condemning the trial as a ludicrously lenient “rescue operation” for a “double murderer” and censuring the Federal Republic, yet again, for its persistent “violations of international law” in not extraditing Weinhold to the GDR.<sup>52</sup> As Weinhold disappeared into prison, however, the case faded from the headlines, and by his release in summer 1982, the entire episode no longer commanded much public interest, except through continued ritualistic commemorations of the hero-victims Lange and Seidel in the GDR.<sup>53</sup>

Having served his time, Weinhold continued to live in the Ruhr area of West Germany under another name, unaware of the fact that the Stasi stayed tightly on his heels. In a long-term operation code named “Terrorist,” agents kept Weinhold under surveillance and prepared various plans to kidnap or kill him. The conspiratorial scenarios sketched out in the Stasi blueprints ranged from an artificially arranged car crash to an “accident” involving power cables and an elaborate plot to drug Weinhold and then smuggle him into the GDR in a

<sup>50</sup>Landgericht Hagen, sentence of Werner Weinhold, December 1, 1978, esp. 11, 52, 56, 58, 63, 67–70; Bundesgerichtshof, “Urteil in der Strafsache gegen Werner Weinhold,” August 23, 1979, both in ZBDoSt: AR-ZE 30/76.

<sup>51</sup>“Abgewogenes Urteil,” *FR*, December 2, 1978; “Penible Sorgfalt nach einem Vorurteil,” *SZ*, December 2/3, 1978; “Flucht und Fahnenflucht,” *Die Welt*, December 2/3, 1978; “Verurteilter Weinhold bekommt CSU-Hilfe,” *Die Tat*, December, 1978.

<sup>52</sup>“Doppelmörder und Terrorist in der BRD weiter auf freiem Fuss,” *ND*, December 6, 1978.

<sup>53</sup>“Werner Weinhold in drei Wochen frei!,” *Neue Ruhr-Zeitung*, June 15, 1982; “Ehrendes Gedenken an ermordete Grenzsoldaten,” *ND*, December 20, 1982.



purpose-built vehicle. In the end, none of these plans was implemented because they were deemed too politically risky, but they remained on the books and led to investigations and arrests after German unification.<sup>54</sup> More bizarrely, Weinhold also briefly reappeared in media headlines in the new millennium. In early 2005, he shot and seriously wounded a middle-aged man in a bar in the town of Marl for no obvious reason—a transgression for which he was sentenced to prison yet again, this time for thirty months.<sup>55</sup>

With its bizarre twists and turns that continued long after the end of the Cold War, Werner Weinhold's complicated and rather melancholy tale illustrates some of the cruel human consequences of Germany's national division. But it also does much more. Particularly in the broader setting of the mid-1970s, it provides an illuminating case study of the manifold challenges that the era of détente posed for the two Germanies and the interaction between them, on both the judicial and political levels, with the pressures of continued conflict and budding cooperation pulling the two states in conflicting directions.

In judicial terms, the Weinhold case showed just how difficult legal cooperation across the inter-German divide remained, even in a period of improving east-west ties. To be sure, potential bases for such cooperation were not entirely lacking in the mid-1970s. Most notably, a rather obscure West German law of 1953 made it theoretically possible for the Federal Republic's judicial authorities to hand criminal suspects over to their East German counterparts, not as a formal extradition (*Auslieferung*) but as a more narrowly defined inner-German "handing-over" (*Zulieferung*).<sup>56</sup> Any such actions were subject to strict preconditions, which had grown increasingly restrictive over the years, however: among other things, there had to be guarantees of a fair trial with an unbiased judge, no political objectives, and no other unfair disadvantages to the defendant. Any potential application of the death penalty—still in use in the GDR, unlike in the Federal Republic—constituted a particular red flag for the West German authorities. As a result, no criminal suspect had been handed over to the East Germans since the 1950s, and the bar for any future attempts to do so was set very high by a precedent-setting legal case of 1974 in which the West German Federal Constitutional Court rejected the handing over of a seventeen-year-old girl who had killed her sadistically abusive father in the GDR and then fled to the west.<sup>57</sup> Concrete legal cooperation between the two Germanies therefore remained minimal, and the negotiations about a

<sup>54</sup>"Weitere Festnahmen im Zusammenhang mit einem Stasi-Mordauftrag," *Frankfurter Allgemeine Zeitung* (hereafter *FAZ*), May 22, 1993; "So ein Ding," *Der Spiegel*, May 24, 1993.

<sup>55</sup>"Weinhold muss für 30 Monate hinter Gitter," *Marler Zeitung*, June 25, 2005.

<sup>56</sup>This was the West German "Gesetz über die innerdeutsche Rechts- und Amtshilfe."

<sup>57</sup>"Auslieferung ist nur noch Ausnahme," *Der Spiegel*, April 8, 1974; "'Republikflüchtling' Werner Weinhold vor Gericht," *FR*, November 26, 1976; "Muss Werner Weinhold mit der Todesstrafe rechnen?," *Neue Ruhrzeitung*, June 26, 1976.

bilateral judicial assistance agreement launched in 1973 had been progressing very slowly.<sup>58</sup>

With its high public prominence, the Weinhold case exposed the limits of inter-German judicial cooperation in a particularly glaring way. It had a direct impact on the ongoing talks between Bonn and East Berlin about the provision of bilateral judicial assistance. The East German side made repeated attempts to link the two issues, threatening to disrupt the negotiations if its demands vis-à-vis Weinhold were not met. Although the talks never got completely derailed, they repeatedly stalled because of the East German protests, which grew particularly vociferous in the aftermath of Weinhold's acquittal in the Essen trial in December 1976.<sup>59</sup> East-west disputes about the legal evaluation of Weinhold's actions thereby waxed into a significant obstacle to judicial cooperation between the two Germanies, even at the level of general inter-state agreements.

The concrete dynamics of Weinhold's prosecution provided an even clearer illustration of the conflicting pressures that the rise of détente imposed on judicial interaction between the two Germanies. From the West German legal perspective, the situation looked relatively straightforward. To be sure, the Weinhold case was surrounded by public controversies and certain politicized pressures, but the Federal Republic's judiciary did possess extensive independence, and public prosecutors in particular were keen to pursue the matter. Weinhold's extradition to the GDR was out of the question, as was any kind of *Zulieferung*, not least because of the possibility that he might face the death penalty in East Germany. Prosecution in West German courts therefore became a priority once the rough outlines of the events of December 19, 1975, were known. Proper investigation of the matter remained difficult, however. The only living eyewitness to what had happened was apparently Weinhold himself. The crime scene lay in the GDR, as did nearly all immediately relevant evidentiary material. Given these facts, the West German judiciary was very heavily dependent on East German authorities and their willingness to assist its investigations.

In the GDR, official attitudes toward the Weinhold case were a good deal more ambivalent, even contradictory. The ideal East German scenario would have been to try Weinhold in the GDR, preferably following his extradition—or at least *Zulieferung*—from the Federal Republic. When this outcome proved unreachable and a trial in West Germany became the only viable way to punish Weinhold, however, East Berlin's authorities found themselves drawn between two objectives. On the one hand, they wanted to see Weinhold convicted and suitably sentenced, simply to prevent the incident from being perceived as “an invitation to use violence at the border” by other

<sup>58</sup>“‘DDR’ droht. Diese Freilassung bleibt nicht ohne Folgen,” *Die Welt*, June 9, 1976.

<sup>59</sup>“Bonn weist erneuten DDR-Protest gegen Freispruch Weinholds zurück,” *Bonner General-Anzeiger*, April 27, 1977.

potential escapees.<sup>60</sup> On the other hand, they were keenly aware of the continuing public relations advantages that the case could provide, particularly if embarrassing judicial developments in the Federal Republic were to cast a pall on their great rival. As a result, the GDR authorities adopted seemingly contradictory stances, particularly early in the West German judicial proceedings, cooperating to a limited degree, for example by handing over some relevant documents, but stopping well short of the kind of full assistance that might have guaranteed Weinhold's conviction. This vacillation between what a journalist labeled "opportunistic political considerations" and the provision of "optimal evidence for a criminal trial" characterized East German actions throughout the Weinhold proceedings, even if the balance gradually shifted somewhat toward the latter pole.<sup>61</sup> Such highly strained cooperation highlighted the challenges that the era of détente posed for the relationship between the two German states, not only in the courtrooms, but—more significantly—also on the wider political stage. The judicial proceedings against Weinhold were highly politicized events, and their political impact showed most clearly in their contributions to the ongoing inter-German battle over legitimacy that raged on largely undiminished even in the changing context of the mid-1970s.

This legitimacy duel had never been a contest of equals. The Federal Republic had been much more successful in acquiring early international recognition from the start; by the 1950s the vast majority of countries outside the Soviet sphere had already established normal relations with Bonn. The GDR, by contrast, had long remained a political pariah, unrecognized anywhere beyond the communist bloc, in good part because of the Hallstein Doctrine, a West German policy principle that stipulated that a recognition of the GDR by a given state was an "unfriendly act" that would provoke a strong reaction from the Federal Republic, probably a rupture of bilateral relations.<sup>62</sup> East Germany had also lagged behind its western rival in more tangible, everyday kinds of legitimacy. By the 1950s, the Federal Republic's social-market economy had generated the so-called economic miracle, which lacked equivalents in the GDR. The expanding individual opportunities and growing affluence in which West Germans seemed to be basking contrasted starkly with the collective restrictions and various shortages that plagued the East German economy. To make matters worse, many of the attributes associated with the Federal Republic enjoyed much higher popular appeal on both sides of the inter-German divide than did their East German counterparts: not only the economic dynamism but also the rhetorical espousal

<sup>60</sup> *Neues Deutschland* editor-in-chief Joachim Herrmann, as reported in Gaus to the Auswärtiges Amt, June 10, 1976, *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland 1976* (Munich: Oldenbourg, 2007), 852.

<sup>61</sup> "Der Freispruch von Essen," *SZ*, December 3, 1976.

<sup>62</sup> See William Glenn Gray, *Germany's Cold War: The Global Campaign to Isolate East Germany, 1949–1969* (Chapel Hill, NC: University of North Carolina Press, 2003).

of individual liberty as well as the links to the west and its traditions rather than to the more controversial Soviet model of eastern Europe. The unpopularity of the East German system had been starkly evident in the massive outflow of its population to the Federal Republic, which by 1961 had not only deprived the GDR of up to 3.5 million mostly young citizens but also handed a powerful public relations trump to the West Germans, who could present the exodus as evidence of the East German people "voting with their feet" against their illegitimate regime.<sup>63</sup> The building of the Berlin Wall in August 1961 had plugged the last major exit valve to the west and thereby stabilized the East German polity, but it had also dealt another blow to the GDR's prestige, regardless of all the propaganda with which the East Berlin authorities tried to justify their actions.

Predictably, therefore, the East German government was obsessed with questions of legitimacy and prestige. Desperate to rid their country of its historically inferior status as the Federal Republic's pauper twin sister, East Berlin's leaders used every possible opportunity to emphasize and enhance the sovereignty and stature of their German Democratic Republic as a normal state. In the course of the 1960s, their efforts began to yield increasing dividends, as Bonn's Hallstein Doctrine slowly eroded and the East German state gradually gained in economic and social stature. But the real turning point came in the early 1970s, with full-blown east-west détente and the launch of the new Ostpolitik by Willy Brandt's social-liberal coalition. During the first half of the 1970s, the new political winds brought various new benefits to the GDR: widespread international recognition, United Nations membership, and—most promisingly—far-reaching normalization of relations with the Federal Republic, although Bonn still refused to recognize the GDR as a fully sovereign and separate state, insisting that the German question remained open, with reunification as the ultimate objective. With all these developments, the East German government had more opportunities than ever to assert its sovereignty and prestige and thereby to buttress its claim to political and popular legitimacy. It seized these chances in all directions, bolstering its international diplomatic presence; trumpeting its economic, technological, and social achievements; insisting on proper protocol and correct terminology about the GDR and its sovereignty at every turn; and launching cultural charm offensives, including impressive, doping-fueled sports successes that promptly transformed the GDR into a veritable sporting superpower.

East Berlin was eager to use the Weinhold case, too, to enhance its legitimacy. In part, such efforts were very open and obvious, most notably in the extradition

<sup>63</sup>Karl F. Schumann, "Flucht und Ausreise aus der DDR insbesondere im Jahrzehnt ihres Unterganges," in *Enquete-Kommission. Band V/3. Deutschlandpolitik, innerdeutsche Beziehungen und internationale Rahmenbedingungen*, ed. Deutscher Bundestag (Baden-Baden: Nomos, 1995), 2359–2405.

requests that the East German side kept pressing vis-à-vis the Federal Republic. Although East Berlin's authorities must have realized early on that their demands would not be met, they stuck to their guns throughout the West German judicial proceedings, with the goal of underscoring the normalcy of the GDR as a respectable *Rechtsstaat* equal or indeed superior to West Germany, and legally fully separate from it. The language in which the East German authorities couched their demands highlighted these objectives. Weinhold's extradition was repeatedly portrayed as being "consistent with standard international legal norms" in the interaction between "two sovereign states."<sup>64</sup>

A more subtle and interesting East German strategy was the mirror-imaging evident in much of the effort to instrumentalize the Weinhold case to score points against the Federal Republic in reverse, on public relations terrain traditionally occupied by the west. Although détente had opened new avenues for the GDR's legitimacy-building campaigns, it had also demanded a price. It had tied the GDR more closely to the wider international community and its declared norms, such as the individual human right of freedom of movement, and it had exposed the country to increasingly open competition with the west in general and the Federal Republic in particular. In this context, East Germany was vulnerable to attack on several issues, such as its repressive internal practices, the most glaring of which was the denial of its citizens' freedom of movement embodied by its heavily militarized border regime, particularly vis-à-vis the Federal Republic. The Weinhold case offered tantalizing opportunities for East Berlin to try to turn the tables on its chief rival in this area of great political and popular sensitivity, and the GDR authorities did their best to seize these chances.

In part, the East German efforts focused on trying to reverse established western discourses about violence at the inter-German frontier. To counter long-standing western denunciations of its brutal border policies and of the Schiessbefehl that supposedly underpinned them, East Berlin now hurled similar accusations at Bonn. According to East German commentators, Weinhold's lenient treatment in the Federal Republic and his de facto "canonization into a hero of freedom" there were "deeply immoral."<sup>65</sup> They showed that West German authorities were prepared to allow "any criminal action . . . as long as it [was] directed against the GDR or another socialist country."<sup>66</sup> West German official reactions in general and the outcome of the Essen trial in December 1976 in particular provided an invitation for "murderers and other criminal elements" to appropriate

<sup>64</sup>See, for example, "Keine Zweifel an Verbrechen Weinholds," *Berliner Zeitung*, June 11, 1976; "Eine ungerechtfertigte Milde," *ND*, December 12, 1978.

<sup>65</sup>"Wo nackter Mord legalisiert wird," *ND*, June 17, 1976.

<sup>66</sup>"UZ: Freibrief für Gewalt bis hin zum brutalen Mord," *ND*, June 11, 1976.

“the overused notion of free movement” for the homicidal purpose of “declaring open season on our border guards.”<sup>67</sup> Similarly, the idea of self-defense in the border zone, which in prevailing western narratives had been associated with the attempts of fleeing refugees to duck bullets, mines, and other mortal dangers, sometimes through the use of counterviolence, now received a very different spin in East German commentary. Weinhold’s efforts to rationalize his actions as self-defense were dismissed as “defamation and slander,” and a prominent East German TV personality accused the Federal Republic of perverting self-defense into a general authorization for “the murder of soldiers of the National People’s Army (NVA).”<sup>68</sup> Overall, the GDR sought to accuse the Federal Republic of operating a kind of sinister Schiessbefehl of its own while describing its own border enforcement policies as something entirely normal, indistinguishable from those applied in any other “civilized states.”<sup>69</sup>

East Berlin also tried to reverse the Federal Republic’s attacks against it on another, more elevated level: that of national and international legal and humanitarian norms. This had traditionally been an area of great vulnerability for the GDR, with many of its practices routinely denounced on the other side of the Iron Curtain as flagrant violations of individualized, western-style human rights. Such vulnerability had increased with the advance of détente. By joining the United Nations in 1973, the GDR had accepted the UN definition of freedom of travel as a human right, and by becoming a signatory to the final act of the Conference on Security and Cooperation in Europe (CSCE) in 1975 (also known as the Helsinki Accords after the city in which they were signed), it had committed itself to promoting various humanitarian principles, such as freer movement of people and ideas across national boundaries, particularly across the east-west divide. With such concrete commitments, and with the regular, multilateral monitoring of the signatories’ compliance with their promises that the CSCE process also provided, the East Germans faced pronounced and sustained public criticism of the contradictions between their formal commitments and actual practices, most glaringly on the freedom of movement issue.<sup>70</sup> Critics in the Federal Republic and elsewhere routinely denounced the GDR as a persistent violator of international agreements and human rights, with much of their ire directed against the country’s militarized border regime, particularly vis-à-vis West Germany. A typical statement issued by the Bonn

<sup>67</sup>“Freizügigkeit für Mörder?,” *ND*, June 12, 1976; “Proteste gegen skandalöse Urteilssprechung in der BRD,” *Junge Welt*, December 4, 1976.

<sup>68</sup>“Weinhold hat die Tat heimtückisch geplant,” *Berliner Zeitung*, November 30, 1976; Karl Eduard von Schnitzler, quoted in “Mörder als Held gefeiert,” *Junge Welt*, December 4, 1976.

<sup>69</sup>“Protokoll über die gerichtliche Beweiserhebung des 2. Strafsenats des Bezirksgerichts Dresden vom 26. April 1978 bis zum 28. April 1978 auf Grund des Rechtshilfeersuches des Generalstaatsanwalt der DDR vom 10. Februar 1978 in der Auslieferungsangelegenheit Werner Weinhold,” *BAL*: DP 2, 2223.

<sup>70</sup>See, for example, Oliver Bange and Gottfried Niedhart, eds., *Helsinki 1975 and the Transformation of Europe* (New York: Berghahn, 2008).

government in summer 1976, for example, exhorted the GDR's rulers to remember that "human rights [were] an essential element of détente" and that East Berlin was therefore obliged to create "humane . . . conditions at the [inter-German] border."<sup>71</sup>

The Weinhold incident allowed the GDR to launch a concentrated counter-offensive against these accusations, and the attempt to cast the Federal Republic as the real culprit in trampling legal and humanitarian norms promptly became the dominant element in East German public rhetoric about the case. As we have seen, East Berlin repeatedly attacked its western rival for its alleged "flagrant violations of international law" on various fronts: its failure to extradite Weinhold, its refusal to abide by the terms of the German-German Basic Treaty of 1972 and to respect "the sovereignty and territorial integrity" of the GDR, and its utter inability to provide just punishment for a brutal "double murderer."<sup>72</sup> In a direct reversal of much of the critical rhetoric regularly directed at them, East German commentators portrayed these alleged West German transgressions as part of a broader pattern of deliberate anti-détente activity, aimed in the first instance at undermining the recently signed Helsinki Accords.<sup>73</sup> In its official narrative, the GDR thereby waxed into the only proper "Rechtsstaat" on German soil, whose lucky and grateful citizens could "barely comprehend" the dark machinations rampant on the other side of the east-west frontier.<sup>74</sup>

The East German efforts to use the Weinhold case to turn the tables on their western opponents in the Cold-War legitimacy battle did work, up to a point. Their impact was probably strongest inside the GDR itself. To be sure, popular opinion in an authoritarian system such as East Germany is difficult to assess, given the paucity of reliable sources. In addition, many of the so-called popular reactions to the Weinhold incident in the GDR, particularly the numerous and widely publicized protest resolutions adopted by workplace collectives, were very consciously organized and steered by the authorities. But it appears that the case in general and its legal aftermath in particular did touch a nerve among many East Germans. West German observers within the GDR underscored this point, describing reactions among both "functionaries and rank-and-file citizens" as "intense" and arguing that the case's biggest contribution had been to increase popular "compassion" for "soldiers who guard the thoroughly unloved border" vis-à-vis the Federal Republic.<sup>75</sup>

<sup>71</sup>West German governmental declaration of July 28, 1976, in *Bulletin des Presse- und Informationsamtes der Bundesregierung*, 1976, 847.

<sup>72</sup>"Doppelmörder Weinhold in BRD weiter auf freiem Fuss," *ND*, June 11, 1976; "Freizügigkeit für Mörder," *ND*, June 12, 1976; "Der Doppelmörder Weinhold gehört vor ein Gericht der DDR," *ND*, January 19, 1977.

<sup>73</sup>See, for example, the materials collated in Panorama DDR, Dokumentarische Information, "Ein Urteil gegen die Entspannung," December 1976, BAB: DP 3, 443.

<sup>74</sup>"Höchstes BRD-Gericht stellt sich vor den Doppelmörder Weinhold," *ND*, August 25/26, 1983; "Empörung in der DDR über das unmenschliche Urteil in der BRD," *ND*, December 6, 1976.

<sup>75</sup>"Wie zwei Grenzfälle fast zum Kalten Krieg wurden," *Vorwärts*, June 24, 1976.

The GDR's publicity campaigns also made a certain impact in West Germany. As we have seen, they provoked public soul-searching about the implications of some long-standing western political and ideological precepts, such as an individual's right to freedom of movement, even across the east-west barrier. A case in point was a much-cited article by one of the Federal Republic's leading left-liberal journalists, which stressed that Weinhold had not fired at a political "system" but rather at "two young people," both of them military draftees. Extrapolating further, this commentator—much like the judges in the second Weinhold trial—concluded that "freedom of movement cannot stretch to a point at which its realization would endanger the freedom—and even the lives—of others."<sup>76</sup> In this fashion, counterpoints to some well-established western tenets about the inter-German Cold-War struggle circulated more widely than before in the Federal Republic, thanks to the controversies unleashed by the GDR's responses to the Weinhold case. But the East German publicity offensive also provoked obverse reactions in the Federal Republic, as conservative commentators reasserted long-established arguments in an effort to deny public relations advances to the East Germans. A flagship newspaper of the highly anticommunist Springer publishing concern, for example, maintained that the GDR's Schiessbefehl was really to blame for this particular tragedy, too, and that the accused in the Essen courtroom in December 1978 should have been not Weinhold but the entire criminal "SED regime."<sup>77</sup>

Ultimately, however, the success of the GDR's efforts remained strictly limited. Although the publicity campaigns with their extensive mirror-imaging did work up to a point, highlighting the interdependence and interconnectedness of the two Germanies, they could not reverse the dominance of the more established West German discourse about the inter-German border and its victims, at least outside the socialist bloc. On this score, too, the rivalry between the two German states was thus hardly one of equals. The long-standing asymmetry in power and legitimacy between the two polities remained a fact even in the era of détente, despite all the seeming gains in stature and prestige that the GDR had recently achieved. In important ways, the situation was actually growing worse for East Berlin in the mid-1970s, as the rising costs of détente policies, particularly in the field of expected human-rights concessions, became increasingly evident. In the long run, the most glaring problems were to emerge precisely in the area in which the East German authorities had tried—and failed—to reverse the prevailing dynamics of competition between themselves and their western archrivals during the Weinhold case: interpretations of the inter-German border and the contested privilege of individual freedom of movement across it.

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<sup>76</sup>Peter Bender, "Das Recht auf Freiheit hat seine Grenzen," *Welt der Arbeit*, June 25, 1976.

<sup>77</sup>"Eine Bruder-Tragödie," *Berliner Morgenpost*, December 3, 1978.